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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/700,430	11/15/2000	David A. Kapilow	1999-0096-2(	5921
7590	09/20/2004		EXAMINER	
AT&T Corp PO Box 4110 Middletown, NJ 07748			HARPER, V PAUL	
			ART UNIT	PAPER NUMBER
			2654	6
DATE MAILED: 09/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/700,430	KAPILOW, DAVID A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	V. Paul Harper	2654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)              |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/26/02</u> . | 6) <input type="checkbox"/> Other: _____.  |

## Detailed Action

### ***U.S. National Stage Application***

1. Acknowledgement is made of the indication that the present application is filed under 35 U.S.C. 371, of the indication that the required form PCT/DO/EO/903 is present, and of the use of transmittal form PCT/DO/EO/1390. Thus, the present application is being treated as a filing under 35 U.S.C. 371.

### ***Information Disclosure Statement***

2. The Examiner has considered the references listed in the Information Disclosure Statement dated 2/26/02. A copy of the Information Disclosure Statement is attached to this office action.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 12 of copending Application No. 09/700524. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Claim 1 has the following limitations:

- decoding received packets to form a speech signal (corresponding to 09/700524, claim 1, lines 7-8);
- determining that one or more packets are not available at the decoder (corresponding to 09/700524, claim 1, lines 5-6);
- synthesizing a speech signal corresponding to the unavailable packets (corresponding to 09/700524, claim 1, lines 9-11);
- encoding the synthesized speech signal (corresponding to 09/700524, claim 12, lines 1-2, uses an encoder);
- providing signals reflecting the encoded synthesized speech to the decoder for use in maintaining decoder state information (corresponding to 09/700524, claim 12, lines 1-2, decoder's state variable track the synthetic frames).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Prieto, Jr. (U.S. Patent 5,907,822), hereinafter referred to as Prieto.

Regarding claim 1, Prieto discloses a method for implementing a loss tolerant speech decoder for telecommunications where if a speech frame is determined to be lost or in error, then an extrapolation module is executed to generate replacement parameters (abstract). Prieto's method includes the following steps:

- decoding received packets to form a speech signal (Fig. 6, OUTPUT SPEECH, col. 4, lines 24-25);
- determining that one or more packets are not available at the decoder (Fig. 6, item 62, col. 4, lines 27-28);
- synthesizing a speech signal corresponding to the unavailable packets (Fig. 6, item 72, col. 4 lines 28-31);
- encoding the synthesized speech signal (Fig. 6, item 72, col. 4, lines 28-31);

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- providing signals reflecting the encoded synthesized speech to the decoder for use in maintaining decoder state information (Fig. 6, items 72 to 64, col. 4, lines 30-35).

***Citation of Pertinent Art***

5. The following prior art made of record but not relied upon is considered pertinent to the applicant's disclosure:

- a) Chen (U.S. Patent 6,351,730) discloses a method of audio coding with adaptive frame loss concealment.
- b) Perkins et al. ("A Survey of Packet Loss Recovery Techniques for Streaming Audio," IEEE Network, Sept./Oct. 1988) survey the packet loss recovery and concealment techniques.

***Conclusion***

Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

or faxed to:

(703) 872-9306

Hand-delivered responses should be brought to:

Crystal Park II  
2121 Crystal Drive  
Arlington, VA.  
Sixth Floor (Receptionist)

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dr. V. Paul Harper whose telephone number is (703) 305-4197. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil, can be reached on (703) 305-9645. The fax phone number for the Technology Center 2600 is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service office whose telephone number is (703) 306-0377.



VPH/vph  
September 13, 2004



VIJAY CHAWAN  
PRIMARY EXAMINER